



ALASKA ESKIMO WHALING COMMISSION  
P.O. Box 570 BARROW, ALASKA 99723

July 27, 2015

**VIA ELECTRONIC DELIVERY**

Environmental Protection Agency  
Freedom of Information Officer  
1200 SW Sixth Avenue  
Seattle, WA 98101  
[R10foia@epa.gov](mailto:R10foia@epa.gov)

**Re: Freedom of Information Act Request Relating to Discharges from Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous Waters in the Beaufort Sea**

To the FOIA Officer:

The Alaska Eskimo Whaling Commission (AEWC) requests that the Environmental Protection Agency provide certain information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., and the implementing regulations of EPA, 40 C.F.R. Part 2. The AEWC represents the eleven bowhead whale subsistence villages of Barrow, Nuiqsut, Kaktovik, Point Hope, Wainwright, Kivalina, Savoonga, Gambell, Little Diomede, and Point Lay.

AEWC's members include whaling captains and communities along the North Slope of Alaska who depend on the bowhead whale and other marine species in the Beaufort Sea and Chukchi Sea for their subsistence livelihood. The Inupiat people depend upon the resources of the Arctic Ocean, not only for the continuation of our ancient traditions, but also for our food security and modern cultural practices and sense of community.

This request seeks information relating to discharges from oil and gas exploration facilities on the Outer Continental Shelf and contiguous waters in the Beaufort Sea, including, without limitation, information relating to the Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES) for Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea (Permit No. AKG 282100) (hereinafter "Beaufort General Permit"). The Beaufort General Permit was remanded to EPA by the Ninth Circuit Court of Appeals on June 29, 2015. *See Alaska Eskimo Whaling Comm'n v. EPA*, \_\_ F.3d \_\_, 2015 WL 3938162 (June 29, 2015).

Within twenty (20) days, please provide us with copies of all documents, correspondence, public comments, responses to comments and all other information relating to the topics set forth below:

- All information relating to the temperature of non-contact cooling water at the point of discharge from oil and gas exploration facilities on the outer continental shelf or contiguous state waters;
- During oral argument in *Alaska Eskimo Whaling Comm'n v. EPA*, Mr. Daniel Pinkston stated that EPA received from industry information that the average difference between the temperature of discharges of non-contact cooling water and the ambient temperature of the receiving water was 1.5 degrees Celsius. Please provide all documents relating to the difference in temperature between discharges of non-contact cooling water from oil and gas exploration facilities and ambient temperature in the receiving water;
- During oral argument in *Alaska Eskimo Whaling Comm'n v. EPA*, Mr. Daniel Pinkston stated that "Table 6" could be used to assess the impacts of discharges of non-contact cooling water on the temperature of the receiving water. Please provide all documents relating to how "Table 6" could be used in this manner;
- All information relating to modeling of impacts from the discharges of non-contact cooling water from offshore oil and gas exploration facilities;
- In its opinion, the Ninth Circuit Court of Appeals stated that EPA must assess whether non-contact cooling water "alone or in combination with other authorized discharges" will cause unreasonable degradation of the marine environment because of the effect of such discharge on bowhead whales and deflection from their migratory paths. *Alaska Eskimo Whaling Comm'n*, 2015 WL 3938162 at \*1. Provide all information on the methods available to EPA to assess the impacts of non-contact cooling water in combination with other discharges on the bowhead whale, its migration and/or the subsistence hunt;
- All documents relating to Alaska water quality standards or federal water quality criteria that address the risk that discharges affecting water temperature may deflect bowhead whales from their migratory route;
- All information relating to water quality data from previous drilling operations in the Beaufort Sea;
- All information on the likely rate, volume, duration and temperature of discharges of non-contact cooling water from oil and gas exploration facilities that are likely to be utilized in the Beaufort Sea, including information on whether a single facility may simultaneously discharge non-contact cooling water from more than one outfall;

- All information on whether bowhead whales have a sense of smell;
- All information on whether non-contact cooling water may contain chemical additives and, if so, whether those chemicals may be detectable by a bowhead whale's sense of smell;
- All documents, policy, guidance, memos or other information on how EPA assesses the "benefits of discharge" under 40 C.F.R. § 125.121(e)(3);
- All documents relating to prior analyses of the "benefits of discharge" under 40 C.F.R. § 125.121(e)(3).

Please identify all responsive or potentially responsive documents within the statutorily described time and the basis for any purported exemption or privilege. If EPA asserts that any portion of the requested records is exempt from disclosure, please provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.3d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity to "permit a reasoned judgment as to whether the material is actually exempt under FOIA," *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987). Furthermore, if certain portions of records are withheld, please disclose any segregable, non-exempt portions of the requested records. 5 U.S.C. § 552(b). Please be specific in asserting claims of non-segregability.

Please provide copies of documents in electronic format if it is possible to do so without causing delay in production of documents.

### **REQUEST FOR FEE WAIVER**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), AEWc requests that EPA waive any fees associated with this search because AEWc is a non-profit, tax-exempt public interest organization whose mission includes a scientific component and because release of these records will serve the public interest of our people, as it is likely to contribute significantly to our public understanding of the topics of government regulation of oil and gas activities in the Arctic Ocean and, in particular, regulation of the discharge of waste material into the marine environment that is used by AEWc's members and our communities for subsistence hunting. In particular, the requested information will contribute to the understanding of the public on the North Slope of Alaska as to how the federal government has and intends to assess the potential for discharges of non-contact cooling water alone or in combination with other discharges to interfere with our subsistence hunt of bowhead whales in the Beaufort Sea. As our elders say, the "sea is our garden," and through this FOIA request we seek to enhance the public's understanding of how the federal government assesses the potential impacts of the discharges of



non-contact cooling water into our garden. In addition, the release of the information is not primarily in the commercial interest of the requester.

**1. This request concerns the “operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).**

The requested records relate to EPA’s processing of, analysis of, and decisions on NPDES permits under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* There is no question here that this request seeks records that concern “identifiable operations or activities of the Federal government.”

**2. The requested documents are “likely to contribute” to an understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(ii).**

EPA’s regulations clarify that the requested information “must be meaningful information about government operations.” CITE. Here, the requested information relates to how the federal government and the EPA have assessed and will assess on remand the potential for non-contact cooling water alone or in combination with other discharges to impact the bowhead whale migration and the subsistence hunt of the bowhead whale. Because the bowhead whale subsistence hunt is well known as the most important subsistence activity for North Slope communities both in terms of the amount of food harvested and the importance of the hunt for the continuation of the ancient culture and traditions of the Inupiat people, the communities on the North Slope are very concerned with and seek information on how the federal government regulates discharges into the marine environment that could affect the bowhead whale and the subsistence hunt. The information requested is more than likely to contribute to the public’s understanding of how the federal government assesses these risks in the context of issuing permits for discharge from oil and gas facilities under the Federal Water Pollution Control Act. In particular, the information requested will assist the public in understanding what scientific methods the agency uses to assess these risks, what prior data exists in helping to make these determinations, and whether EPA has any policy or guidance documents for weighing these risks against the benefits of discharge are required by regulation.

**3. Disclosure of the requested information is likely to contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. 40 C.F.R. § 2.107(l)(2)(iii).**

The disclosure of the requested information is likely to contribute to the understanding of the Inupiat communities on the North Slope of Alaska, and the eleven bowhead whale hunting villages that AEWc represents – ranging from the Eastern Beaufort Sea into the Bering Sea – regarding the activities of the federal government in regulating discharges of non-contact cooling water from offshore oil and gas activities. Our elders formed the AEWc for the specific purpose of conserving the bowhead whale and its habitat and to advocate for and protect the interests of the Inupiat people in the sustainable subsistence hunt of the bowhead whale. We also promote scientific research on the bowhead whale and regulate the subsistence hunt pursuant to the cooperative agreement with the National Oceanic Atmospheric Administration.

To uphold this responsibility placed upon us by our elders, AEWc has for many years monitored and participated in the regulatory activities of EPA as they relate to regulating the discharges of waste material into the Arctic Ocean, including offshore drilling waste. AEWc enters into an annual Conflict Avoidance Agreement (CAA) with offshore operators that establishes management practices designed to prevent conflicts between our subsistence activities and the activities of offshore operators. AEWc therefore has specialized knowledge and the ability and intention to disseminate the information requested in a broad manner and to do so in a manner that contributes to the understanding of the public-at-large, particularly the communities of the North Slope of Alaska. The CAA includes zero discharge requirements agreed to by our whaling captains and certain offshore operators. The terms of the CAA are established by our whaling captains each year, in collaboration with representatives of arctic offshore oil and gas operators, using a democratic, community-based process. Through the annual CAA process, whaling captains from across the North Slope receive information from AEWc on the activities of offshore operators and regulation of those activities by the federal government. The structure used to share this information reflects our traditions and our cultural practices of oral exchange of information. At the annual CAA meeting, as many as 150 whaling captains from across the North Slope and into the Bering Straits Region are given the opportunity to speak on the design of mitigation measures to ensure that offshore oil and gas operations do not cause adverse impacts to the availability of bowhead whales for subsistence taking. EPA has attended many of these meetings and has presented at these meetings specifically in order to disseminate information to our communities on the regulation of offshore activities, and EPA has witnessed first hand how information is disseminated during AEWc's annual meeting and how important it is for AEWc to be able to communicate this information to our communities.

In short, the entire Inupiat community on the North Slope of Alaska and the Siberian Yupik community of the Bering Straits region look to AEWc for information on offshore oil and gas operations, and our people expect AEWc to advocate for the conservation of the bowhead whale and its habitat. The AEWc will disseminate this information to our whaling captains and the Inupiat and Siberia Yupik public of northern Alaska, as it has done for decades. In this way, the release of the requested information will contribute to the public's understanding of the regulatory functions of EPA.

**4. Disclosure of the information is likely to contribute significantly to the public understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(iv).**

The information requested will contribute significant to the public's understanding of government operations and activities because the information relates specifically to the upcoming remand proceedings that were ordered to take place by the Ninth Circuit Court of Appeals. The requested information will allow AEWc and the communities in northern Alaska to participate in those upcoming remand proceedings in a way that is more fully informed and more effective both for the public at large and for the agency, because it will ensure that public participation is informed by as much available evidence as possible. The information requested by AEWc relates directly to the subject of the upcoming remand proceedings and therefore will contribute significantly to an understanding of government operations and activities.

**5. AEWEC has no commercial interest in the disclosure of these records. 40 C.F.R. § 2.107(l)(3)(i).**

As a non-profit, tax-exempt public interest organization, AEWEC has no commercial interest in the disclosure of this information. AEWEC does not engage in "commercial, trade, or profit" activities. 40 C.F.R. § 2.107(b)(1). The requested records will be used to further AEWEC's public interest mission of conserving the bowhead whale and its habitat and protecting the traditions and culture of the Inupiat and Siberian Yupik people.

**6. Because AEWEC has no commercial interests in the disclosure of these records, the public interest far outweighs the nonexistent commercial interest.**

Because AEWEC has no commercial interest in these records, the public interest far outweighs the nonexistent commercial interest. A fee waiver is therefore justified, because the public interest is "greater in magnitude than that of any identified commercial interest," of which there is none.

**DELIVERY OF DOCUMENTS**

Please deliver the documents and direct any correspondence or question regarding this request to our counsel at the following address:

Chris Winter  
Crag Law Center  
917 SW Oak St.  
Suite 417  
Portland, OR 97205  
(503) 525-2725  
[chris@crag.org](mailto:chris@crag.org)

If the fee waiver is denied, please contact Mr. Winter before incurring any expenses with an estimated cost. In that event, we also request a written explanation for the denial.

Thank you for your cooperation, and we look forward to hearing from EPA within the required time frame of twenty (20) working days.

Sincerely,



Mr. Harry Brower, Jr.  
Chairman